

LORRAINE LAULER TRUST

IBLA 80-298

Decided January 30, 1981

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting exercise of first refusal to purchase public lands. C-14118 PS.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Sales --Public Sales: Preference Rights

The exercise of a right of first refusal pursuant to sec. 214 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1722 (1976), by one having a preference right to purchase public land in accordance with sec. 2 of the Unintentional Trespass Act of 1968, 43 U.S.C. § 1432 (1976), is properly rejected when the preference right holder fails to submit satisfactory evidence of the ownership of contiguous lands within the time specified by the authorized officer as provided by regulation.

APPEARANCES: Lorraine Lauler, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Lorraine Lauler has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated December 10, 1979, rejecting an exercise of first refusal made by the Lorraine Lauler Trust, pursuant to section 214 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1722 (1976). The basis for the rejection was a failure to provide satisfactory proof of ownership of contiguous lands within the time specified by the authorized officer.

On September 24, 1971, Kenneth H. Newbury and F. Lynn French filed a public sale application (C-14118) with the Colorado State Office, Bureau of Land Management (BLM), pursuant to the Unintentional Trespass Act of 1968, 43 U.S.C. §§ 1431-1435 (1976), 1/ for 20 acres of public land in Gunnison County, Colorado. 2/ By letter dated May 1, 1978, in response to an inquiry concerning their application, applicants were informed by BLM that sale procedures were being revised in Washington and that a projected sale date could not be predicted.

On March 8, 1979, BLM issued a "Notice of Sale and Right of First Refusal" which was subsequently published in a local newspaper. The notice stated that, in accordance with section 214 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1722 (1976), owners of land contiguous to the 20 acres in question were being given the right of first refusal to make an offer to purchase the public land at its September 26, 1973, appraised fair market value. 3/ By letter BLM also informed certain individuals, thought to be contiguous land owners, of their right of first refusal.

By letter dated April 6, 1979, Harrison F. Russell, Esq., forwarded to BLM a check for \$4,535 and an "Exercise of First Refusal," signed by Barbara J. Barron, Assistant Trust Officer of the Gunnison Bank and Trust Company (Bank), Gunnison, Colorado, as trustee for the Lorraine Lauler Trust (Trust). He attached a copy of the trust agreement which he indicated established that the Bank was owner of a contiguous tract of land which had been conveyed to the Trust by Lorraine Lauler on July 6, 1978.

By letter and documents dated April 25, 1979, Newbury and French also exercised their right of first refusal as contiguous land owners. BLM issued a decision on July 25, 1979, notifying Newbury and French and the Bank, as trustee, that proof of fee simple ownership of lands contiguous to the parcel in question as of April 14, 1979 (the 30th day following first publication of the notice), had to be filed with BLM within 30 days of receipt of the decision. 4/ Newbury and French filed their certification of ownership to contiguous lands on September 6, 1979.

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1/ The Unintentional Trespass Act expired September 26, 1971, but it provided for the consummation of applications made prior to its expiration. 43 U.S.C. § 1435 (1976).

2/ The land was described in the application as NE 1/4 SE 1/4 NE 1/4, N 1/2 SE 1/4 SE 1/4 NE 1/4, E 1/2 NW 1/4 SE 1/4 NE 1/4 sec. 15, T. 49 N., R. 1 W., New Mexico principal meridian.

3/ In this case \$4,535.

4/ The case file contains only one certified mail return receipt card, signed by French on August 9, 1979.

Because BLM had no record of service of the July 25, 1979, decision on the Bank, it granted the Bank 30 days from receipt of an October 1, 1979, letter in which to file the necessary proof. 5/

By letter dated October 11, 1979, Harrison F. Russell, Esq., informed BLM that: "Pursuant to your letter of October 1, 1979 to the Gunnison Bank and Trust Company, enclosed is Form 2710, Certificate of Ownership duly verifying the ownership of the adjoining land by the Gunnison Bank and Trust Company as Trustee for the Lorraine Lauler Trust." 6/ BLM did not receive Russell's letter and the enclosed certificate until December 5, 1979. The envelope bears a postmark of December 3, 1979.

On December 10, 1979, BLM issued a decision rejecting the exercise of first refusal on behalf of the Trust. 7/

On appeal Lorraine Lauler states that the Bank was administering her Trust and that Russell was her attorney handling her legal affairs. She claims to have no knowledge of the requests by BLM for proof of ownership. She states:

I continually asked both the bank & Mr. Russell if they had heard anything about the 20 acres in question, & no one had.

I was in Gunnison in Oct. and asked the bank & the lawyer again if they had heard about the land--or the money that I had sent.

Appellant asserted generally that she was the owner of contiguous land at the time the check was forwarded to BLM on April 6, 1979, and that she continued to own the land in January 1980.

[1] Section 214(a) of FLPMA, 43 U.S.C. § 1722(a) (1976), provides that notwithstanding the provisions of the Unintentional Trespass Act of 1968, supra, the Secretary shall give the right of first refusal to those having a preference right under the 1968 Act. The procedure governing sales under the Unintentional Trespass Act is set out in 43 CFR Subpart 2711 (1979). See Yose Cattle Company, 24 IBLA 347, 349 (1976). 8/

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5/ The certified mail return receipt card shows that the letter was received by the Bank on October 2, 1979.

6/ The certificate of ownership was signed by Barbara J. Barron, certified by Russell, and dated October 1, 1979.

7/ The decision was issued to Barbara J. Barron, Trustee, Lorraine Lauler Trust. The decision indicates that copies were sent to Russell and to Lorraine Lauler. Neither the Trust nor Russell appealed the decision.

8/ On June 10, 1980, in 45 FR 39416, final rules were published with an effective date of July 10, 1980, governing the sale of public lands under FLPMA. Those rules revised the procedures in Part 2710, including Subpart 2710 and Subpart 2711.

The pertinent regulation, 43 CFR 2711.4(b)(2) (1979), provides:

Each preference-right applicant must, within the time specified by the authorized officer, or such extensions of time as he may grant, submit proof of ownership of the whole title to the contiguous lands, that is, he must show that he had the whole title in fee on the last day of the 30-day period. The authorized officer will specify that date. [Emphasis added.]

The requirement that the proof of ownership be filed within the time specified by the authorized officer is mandatory. Yose Cattle Company, supra at 349. As between two preference right applicants for the same land, 43 CFR 2711.4(b)(2) must be strictly construed with regard to the deadline for making the required showing of fee title to contiguous lands. L. A. Gillette, 33 IBLA 182 (1977); James L. Thompson, 14 IBLA 131 (1974). One who fails to submit satisfactory evidence of ownership within the time specified by the authorized officer loses the preference right to purchase the land. Yose Cattle Company, supra at 350; Mildred M. Miller, 7 IBLA 363, 364 (1972).

Evidence of ownership was not submitted in this case until well beyond the deadline as extended. 9/ The exercise of first refusal was properly rejected by BLM.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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James L. Burski  
Administrative Judge

----- 9/ No explanation of the lapse of time between the date of the October 11, 1979, letter and the December 5, 1979, filing has been given by appellant. It appears that she does not know the reason for the delay. The record contains no offer or explanation for the delay by the Bank or Russell.

